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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,580	07/15/2003	Ludolf Jakobs	20228.8	6892

7590 05/18/2005

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EXAMINER

AMERSON, LORI BAKER

ART UNIT PAPER NUMBER

3764

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/618,580	Applicant(s) JAKOBS ET AL.	
	Examiner L. Amerson	Art Unit 3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 January 2005.
 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12, 14-15, 18-33 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 1-12, 15 and 18-33 is/are rejected.
 7) ☒ Claim(s) 14 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☒ All b) ☐ Some * c) ☐ None of:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: <u>1</u> _____ | 6) <input type="checkbox"/> Other: _____ |

Response to Arguments

1. Applicant's arguments with respect to claims 1-31 have been considered but are moot in view of the new ground(s) of rejection. The indicated allowability of claims 13 and 15-18 is withdrawn in view of the newly discovered reference(s). Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

a. Claims 1-5, 12, 18, 21-23 and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable under Goldfarb et al in view of Thomas. Goldfarb et al discloses a shaped body of plastic material with rounded outer contours comprising a first, second and third plane (14) having an oval outer periphery. Regarding the language "for carrying out a method of active motion therapy by filling bulk material of shaped bodies into a container, wherein limbs to be trained are immersed into the bulk material for carrying out exercises" has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. Goldfarb et al disclose all of the limitations of the claimed invention except for the colorant. Thomas teaches in col. 3, lines 39-52 a colorant added to plastic. It would have been obvious to one having ordinary

skill in the art at the time the invention was made to include a colorant to plastic in order to change the color and the aesthetic appeal of the plastic device. As to claims 2-5, and 21 the language has not been given patentable weight because the recitation is purely functional in nature and does not recite any structure. As to claim 12, the bodies are made from a thermoplastic, col. 2, line 28. As to claim 23, the bulk material is different sizes (fig. 1). As to claims 30-31, the container (12) is made from plastic (col. 2, line 24).

b. Claims 6-11, 19-20, 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldfarb et al and Thomas as applied to claim 1 above.

Goldfarb et al disclose all of the limitations of the claimed invention except for the ratios and size dimensions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Goldfarb et al such that a ratio of length and width and size dimensions provide for a varying resistance to the user while exercising. Furthermore, absent a teaching as to criticality that the ratio be between 1:1.5 and 1:5 or 1:1.5 and 1:3.5, etc. or the length between 0.4cm and 4.0cm, etc., this particular arrangement is deemed to have been known by those skilled in the art since the instant specification and evidence of record fail to attribute any significance (novel or unexpected results) to a particular arrangement. In re Kuhle, 526 F.2d 553, 555, 188 USPQ 7,9 (CCPA 1975).

a. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Goldfarb et al and Thomas as applied to claim 1 above and further in view of

Kessler. Goldfarb et al disclose all of the limitations of the claimed invention except for the body consisting of polyolefin. Kessler teaches the body consisting of polyolefin (col. 3, line 2). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Goldfarb et al in view of the teaching of Kessler such that a device can be made from polyolefin for durability purposes.

b. Claims 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldfarb et al in view of Zinbarg. Goldfarb et al disclose all of the limitations of the claimed invention except for the body consisting of polypropylene. Zinbarg teaches polypropylene (col. 4, line 30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Goldfarb et al in view of the teaching of Zinbarg such that a device can be made from polypropylene for durability purposes.

3. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Any inquiry concerning this communication or earlier communications from the examiner should be directed to L Amerson whose telephone number is (571) 272-4971. The examiner can normally be reached on Mon.-Fri from 9-6 p.m. Interviews Tue. and Thur..

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'L. Amerson', with a long horizontal flourish extending to the right.

L. Amerson